IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1283 OF 2003

Ankush Sadashiv Adake ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. A.A. Sait for the appellant.

Smt. V.R. Bhosale for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 7TH NOVEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. Being aggrieved by the judgment and order dated 4.12.2002 of the Additional Sessions Judge, Islampur, the accused has filed the present appeal. The accused has been convicted under Section 302 of the Indian Penal Code and has been sentenced to life imprisonment.

2. The prosecution has charged the accused of having murdered his wife Maya by strangulating her during the night between 17th and 18th of April, 1999. According to the prosecution, the accused and his family often harassed the victim since she was not able to meet their

demands for money. The victim had suffered from high blood pressure when she was pregnant about 10 to 12 months prior to the death. She was required to undergo medical treatment for terminating the preganancy for which the accused spent Rs.4,000/-. The accused demanded this money from his wife and her parents. However, since the amount was not paid by Mahadeo, the father of the victim, there was marital discord between the victim and the accused. On account of this, the victim often went to her parental home. On 14.4.1999 the accused and the victim attended a fair in the village where the parents of victim stay. They stayed with the victim's parents for a couple of days and on 17.4.1999 they left for their own home at about 2.30 in the afternoon. The prosecution has then alleged that 2 or 3 persons from Kasegaon i.e. the village of the accused went to the parents of the victim late that night and informed them that she had suffered a heart-attack and was admitted in the hospital at Islampur. Then they advised the parents of the victim to go to Kasegaon to meet the victim as she would have been brought back to Kasegaon by the time they reached the place. The parents reached Kasegaon at 2.00 a.m. on 18.4.1999 and found that their daughter Maya was dead. According to the prosecution, the accused made an extrajudicial confession to his father-in-law and told

him that he had strangulated Maya with a towel. Mahadeo, Maya's father lodged a complaint with the Kasegaon Police Station and an offence was registered under Section 302 of the Indian Penal Code against the accused. The required panchnamas were drawn up and the dead body was photographed. The towel which the accused had used to strangle his wife was seized. The accused was then tried by the Additional Sessions Judge, Islampur and has been convicted as aforesaid.

3. The prosecution has relied on 5 witnesses. The first witness examined on behalf of the prosecution is the panch witness who has deposed to the inquest panchnama and the seizure of the towel used for strangulating the deceased. This witness has deposed that on 17.4.1999 the accused had visited him at Hingangade, a village which is at the distance of about 70 to 80 kms. from Kasegaon. He visited him between 11.00 and 12.00 noon as his mother was ill. This witness then claims that the accused stayed with him overnight. Two persons arrived in a jeep at about 2.00 a.m. on 18.4.1999 and informed the accused that his wife was seriously ill. This witness then states that he and his mother and the accused left for Kasegaon with those persons in the jeep.

4. PW-2 is Mirabai, the mother of Maya. This witness has deposed that the accused came to their place on 14.4.1999 with Maya for the village fair. Both, the accused and Maya left for Kasegaon on 17.4.1999 at about 2.00 p.m. Two persons arrived in a jeep at her residence late that night and informed her and her family that Maya was not well and that they should be ready to go to Kasegaon. In the meantime, these persons went to bring Manohar i.e. PW-1 from Hingangade. Manohar is the cousin of the accused. When PW-2 reached Kasegaon alongwith her husband they were informed that Maya was dead. They found the accused and his parents were present in the house. The witness then speaks about an extrajudicial confession made by the accused. The accused informed them that he had got enraged when Maya failed to react after being told that her sister's husband had contracted a second marriage. It was thereafter that the accused strangled his wife. This witness has also deposed about the illness of Maya and the payment made by the accused for her treatment. She has also mentioned that the accused had demanded the amount from them which they were unable to pay. The suggestion put to this witness in cross-examination that the accused was not present in the house when she and her husband reached there, has been denied by the witness.

5. PW-3 is the complainant and the father of the victim. This witness has corroborated the testimony of his wife PW-2. He has spoken about the extrajudicial confession made by the accused to him. This witness has stated that the accused had informed him that he strangulated Maya with a twisted towel. Apparently, the F.I.R. does not indicate that the towel was twisted. In our opinion, this is not a material omission. The fact that the accused had used a towel for strangling Maya has been mentioned in the F.I.R.

6. PW-4 is the police constable who recorded the complaint of PW-3. PW-5 is the investigating officer. He has proved the panchnama. He has also stated that the body was photographed. This witness has produced the post-mortem report received after the autopsy on the dead body. The post-mortem report indicates that death was due to asphyxia on account of strangulation. Ligature marks were found on the neck.

7. In the deposition under Section 313 of the Criminal Procedure Code, the accused denied having been present in his house on 17.4.1999. He claims to have been at Hingangade at his cousin’s house i.e. PW-1’s house on 17.4.1999. He adduced evidence on his behalf by

examining Vikas Radhunath Adake. This witness claims that he and his friend had hired a jeep on 17.4.1999 at about 11.00 p.m. in Kasegaon when they were informed by the father of the accused that Maya had suffered a heart-attack. They reached Hingangade at about 2.00 a.m. and informed the accused. He then states that he and the accused and other members of the family of the accused left for Kasegaon and reached there by about 5.40 a.m. on 18.4.1999. The deposition of this witness is contrary to the deposition of PW-1. Both their depositions regarding the presence of the accused at Hingangade are unbelievable. They have also stated that the accused was in the jeep accompanied by PW-1 and his aunt. However, PW-1 and the accused in his statement under Section 313 of the Criminal Procedure Code have stated that PW-1's mother has extremely unwell. It is unbelievable that she would have accompanied them to kasegaon. Further, PW-1 does not mention the name of DW-1 as the person who arrived in the jeep to inform the accused of his wife's heart attack. On the other hand, the presence of the accused at Kasegaon has been established through the evidence of PW-2 and PW-3.

8. The case is based on circumstantial evidence. The circumstances which the prosecution has relied on to complete the chain to establish the guilt of the accused

are that - (i) the accused had demanded money from the parents of the victim for the medical expenses borne by him for treatment of the victim; (ii) the accused and the deceased had left Kasegaon on 17.4.1999 at about 2.00 p.m.; (iii) ligature marks were seen on the victim's neck; (iv) the seizure of the towel used to strangle the deceased; and (v) the post-mortem report indicating death due to asphyxia on account of strangulation.

9. The evidence of PW-2 and PW-3, in our opinion is natural and believable. Both these witnesses have spoken about the demand made by the accused on them for reimbursement of the medical expenses borne by him for the treatment of his wife, Maya. Both these witnesses have stated that the accused and the victim visited them on 14.4.1999 and that they stayed with them for a couple of days. They have also stated that the accused and the victim left the house on 17.4.1999 at about 2.00 p.m. These witnesses have also denied the presence of the accused in the jeep in which they travelled to Kasegaon. In our opinion, therefore, there is no reason to doubt their testimony. There are no material omission or addition or discrepancy or contradiction in their evidence. Both these witnesses have stated that they have seen the ligature marks on the neck of the

deceased. We have perused the photographs of the dead body in Court. The ligature marks are evident on the corpse. The medical evidence also indicates that there were ligature marks on the neck of the deceased and that the cause of death has been mentioned as asphyxia due to strangulation. These factors, coupled with the fact that the towel was seized from the spot, and the extrajudicial confession made to the father of the victim by the accused lead to the inevitable conclusion that the accused is guilty of having murdered his wife.

10. We have with the assistance of the learned advocate appointed for the accused and the learned A.P.P., perused the entire record and reappreciated the evidence. We find that the assessment of the evidence on record and the conclusions drawn by the learned Sessions Judge are justified. We confirm the findings recorded by him.

11. In these circumstances, the appeal is dismissed.

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